Filed 4/27/16 Hassid v. Olympic Capital Venture CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

AVRAHAM HASSID et al., Plaintiffs and Appellants, v. OLYMPIC CAPITAL VENTURE, LLC et al., Defendants and Respondents.	B258373 (Los Angeles County Super. Ct. No. BC426828)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael Linfield, Judge. Affirmed.

Ecoff Landsberg, Ecoff Campain & Tilles, Lawrence C. Ecoff and Alberto J. Campain for Plaintiffs and Appellants.

Mirman, Bubman & Nahmias, Michael E. Bubman and Scott C. Timpe for Defendants and Respondents Olympic Capital Venture, LLC and Canico Capital Company, LLC.

Law Office of Mitchel Stanton, Mitchel Stanton, and Mirman Bubman & Nahmias, Michael E. Bubman, Alan M. Mirman, and Scott C. Timpe for Defendant and Respondent Abraham Assil.

Lebedev, Michael & Helmi, Gennady L. Lebedev, Ethan O. Michael and Sam Helmi for Defendants and Respondents Morris Nejathaim, Isaac Javdanfar and Hamed Yazdanpanah.

Plaintiffs Avraham Hassid and his business entities[1] (collectively, Hassid) appeal from the summary judgment in favor of defendants Olympic Capital Venture, LLC, Canico Capital Group, LLC, Abraham Assil, Morris Nejathaim, Isaac Javdanfar, and Hamed Yazdanpanah.[2] Finding no triable issue of material fact, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 2009, Hassid was delinquent on three secured loans with a principal balance of over $5.4 million.[3] His loans were among those acquired by the Federal Deposit Insurance Corporation (FDIC) from failed financial institutions. The FDIC sold bundles or pools of nonperforming loans to private investors. In order to avoid foreclosure sales of the real properties securing his loans, Hassid set out to purchase the "Loan Pool" that contained his loans.

The notes in the Loan Pool had a collective face value of $29 million. Hassid thought the Loan Pool could be acquired for $15 million, or 52 percent of face value, but

---

[1] Hassid's business entities are 4606 California, LLC, Olympic 2000 Investment Group, LLC, and 7621 Van Nuys, LLC.

[2] Three other defendants—Mehran Sadigpour, Kamran Samouha, and Djavid Hakakian—were dismissed from the appeal in July 2015.

[3] In 2003, Network Bank, USA granted Hassid a $50,000 loan (later increased to $1.35 million), secured by real property in the name of 7621 Van Nuys, LLC. In 2004, Network Bank gave Hassid a $1 million loan (later increased to $1.735 million), secured by real property in the name of 4606 California, LLC. In 2005, Security Pacific Bank issued Hassid a $2.5 million loan (later decreased to $2.4 million), secured by real property in the name of Olympic 2000 Investments Group, LLC.

lacked the necessary funds. He knew the FDIC required bidders to be prequalified, pay an initial deposit of $100,000, and, if successful, provide a second deposit of 10 percent of the purchase price, with the balance due shortly thereafter.

Hassid knew his friend, Raffi Cohen, was prequalified by the FDIC, and asked that he purchase the Loan Pool on Hassid's behalf. Cohen agreed to do so through his business entity, Galaxy Commercial Holdings. Cohen also agreed that if Galaxy's bid was successful, Galaxy would transfer the Loan Pool to Olympic Capital Venture (Olympic CV), an entity owned by Galaxy, and Hassid's designee would become the sole member of Olympic CV.

Hassid invited a friend, Assil, to invest $15 million in the Loan Pool venture. Hassid related the terms of the venture to Assil: Assil's payment would be due 45 days after the auction; Assil would receive an eight percent return on his investment and become owner of Olympic CV; Hassid and Assil would share profits and income from Olympic CV equally; Hassid's notes would not become due until all other notes in the Loan Pool were repaid; and Hassid would be allowed to buy his notes at the purchase price of the Loan Pool (52 percent of face value). Assil orally agreed to these terms.

Galaxy paid the initial $100,000 deposit using funds borrowed by Hassid. Galaxy placed a bid of $15 million for the Loan Pool. On April 2, 2009, its bid was accepted as the winning bid. Galaxy paid the second deposit, and was told the balance of the purchase price was due in 10 days.

Upon learning the balance was due in 10 days rather than 45 days, Assil informed Hassid that he could not fund the entire amount in 10 days, but could pay $5 million. Hassid accepted Assil's reduced contribution, and set out to find additional investors. They had no further discussion regarding their agreement.

Hassid invited a friend, Hakakian, to invest in the Loan Pool on the following terms: Hakakian would receive an eight percent return on his investment; Hassid would receive 20 percent of the total income and profits from the Loan Pool; Hassid would be allowed to purchase his notes at the purchase price of the Loan Pool (52 percent of face value); a Hakakian and his son-in-law Yazdanpanah invested $5 million.

Hassid continued soliciting other investors, and eventually secured the remaining funds within the 10-day period. The additional investors included Nejathaim and Javdanfar.

The balance of the purchase price was transmitted to the FDIC. The Loan Pool was acquired by Galaxy and transferred to Olympic CV. Assil, who became Olympic CV's sole member, met with the other investors. Hassid was at that meeting, but did not participate in the discussion or assert any rights in the Loan Pool. A dispute arose among the investors regarding the management and control of Olympic CV. Several investors filed a lawsuit against Assil. (*Djavid Hakakian v. Abraham Assil* (Super. Ct. L.A. County, No. BC416078) (investor lawsuit).) The investor lawsuit was resolved by an agreement to transfer the Loan Pool to a new entity, Canico, in which each investor was given a membership interest. Assil and Eshaghian became co-managers of Canico.

Canico initiated nonjudicial foreclosure proceedings against the real properties securing Hassid's loans. Claiming this was a breach of the joint venture agreement, Hassid filed the present lawsuit.

A. Allegations of the Complaint

Hassid's second amended complaint, the operative pleading, alleged that each investor was bound, either directly or through their agents Assil and Hakakian, by the terms of the joint venture agreement. The complaint alleged in relevant part that "[i]n or about April 2009, Defendants ASSIL, HAKAKIAN, and the other Defendants *through their agents and representatives*, entered into an oral agreement to form a joint venture, OLYMPIC CV, for the purpose of purchasing the Loan Pool from the FDIC."[4] (Italics added.)

The contract claims were based on an alleged exchange of consideration. In order to induce the investors to finance the venture, Hassid provided the following services:

---

[4] Allegedly, Hakakian entered into a similar joint venture agreement with Hassid after Assil reduced his contribution to $5 million.

"locating the FDIC Loan Pool purchase opportunity," "investing his own monies" in the Loan Pool purchase, "securing a qualified individual to bid on the Loan Pool," and "locating and securing the investors to purchase the Loan Pool." In return for these services, the investors granted Hassid various rights in the joint venture: profit and income participation; a reduction in principal and interest on his notes; and deferral of his repayment obligations.

Claiming the investors and their affiliated entities—Olympic CV and Canico—violated the terms of the joint venture, Hassid asserted claims for breach of oral contract (first cause of action), breach of the implied covenant of good faith and fair dealing (second cause of action), declaratory relief (fourth cause of action), and specific performance (fifth cause of action) (collectively, the contract claims). Hassid also alleged claims for fraud against Assil and Hakakian (third cause of action),[5] and accounting against Olympic CV and Canico (sixth cause of action).

The trial court heard a series of summary judgment motions—a joint motion by Nejathaim and Javdanfar, a joint motion by Hakakian (who is not a party to this appeal) and Yazdanpanah, a joint motion by Assil and Capital CV, and a motion by Canico.

B. Motions by Nejathaim & Javdanfar and Hakakian & Yazdanpanah

Nejathaim, Javdanfar, and Yazdanpanah denied entering into a joint venture agreement with Hassid. In their declarations, Nejathaim and Yazdanpanah denied granting Hassid an interest in any joint venture, or authorizing anyone to do so on their behalf.

[5] The trial court denied Hakakian's motion for summary adjudication of the third cause of action, but that cause of action was dismissed as to him before this appeal was filed.

The moving parties relied on deposition testimony by Hassid in which he claimed to have a joint venture agreement with Nejathaim and Javdanfar, but gave no details as to its formation:[6]

"Q BY MR. ROSS: When did you talk to Morris [Nejathaim] about that?

"A [Hassid]: I don't recall exactly the date.

"Q Where were you when you talked to Morris about that?

"A What topic did we talk about? Please tell me what specific topic he's asking about.

"Q I'm asking about your lawsuit that the investors weren't upholding their agreement with you. And now I'm asking you where you were when you reached this agreement with Morris.

---

[6] "Q I'm asking about your lawsuit that the investors weren't upholding their agreement with you. And now I'm asking you where you were when you reached this agreement with Morris [Nejathaim].

"THE DEPONENT [Hassid]: I don't know what is it. Where was I? I don't know. I have no answer.

"Q BY MR. ROSS: Is that because you never had such a meeting with Morris?

"A Yes, we did have a meeting with Morris.

"Q Where were you when you had the meeting with Morris about this agreement?

"A It was twice at their lawyer's.

"Q What lawyer was present?

"A Their lawyer, Morris's and Javdanfar's.

"Q And that's when Morris told you that he wouldn't foreclose on the property?

"A No. Morris and Javdanfar didn't have a clue of what was going on there; they had no power or no knowledge.

"Q So why did you sue them for breaching an agreement with you?

"MR. CAMPAIN: Objection; calls for a legal conclusion.

"THE DEPONENT: I don't know. Usually I don't know how a lawsuit proceeds. It's my lawyer, whatever my lawyer I—he prepared the lawsuit that I told him."

"A I'm not a legal specialist. I don't know the way of the law. I do know that they broke the agreement. And my lawyer was supposed to sue them or the company or the person[nel]."

The moving parties cited Assil's deposition testimony that he did *not* inform the other investors about his agreement with Hassid. The parties agreed in their separate statements that "Assil did not inform Hakakian or Yazdanpanah about his relationship with Hassid or promises he may have made to Hassid."

1. Opposition by Hassid

Hassid argued that after Nejathaim and Javdanfar were told he was forming a joint venture[7] to purchase the Loan Pool and were informed of the terms of the venture, they decided to invest.[8] The terms of the joint venture, according to Hassid's deposition testimony, included "interest on their investment, a percentage of the profits, forbearance on collecting payment on Hassid's loans, and forbearance from foreclosing on Hassid's properties."

According to Hassid's separate statement, "[s]everal days after the Loan Pool was purchased, Hassid confirmed his agreement with Nejathaim and Javdanfar, which was the same deal he had with the other investors."[9] In support of this assertion, Hassid referred

---

[7] Hassid cited his own deposition testimony in which he identified the members of the joint venture—"Mr. Assil, Mr. Hakakian, Mr. Hamed [Yazdanpanah], and Morris [Nejathaim]"—and described the terms of the venture—"that Olympic Capital Venture, or its successor, would forbear payment on the principal amount of your loans until collection of the other loans in the pool."

Hassid cited Nejathaim's deposition testimony that he knew Hassid was trying to gather a group of investors to purchase the Loan Pool.

[8] According to Hassid's separate statement, Nejathaim and Javdanfar "consulted only amongst themselves and decided themselves to invest. Nejathaim decided to invest in the Loan Pool and did invest his monies on April 17, 2009. Nejathaim and Javdanfar's combined investment was 3 million."

[9] Hassid relied on Nejathaim's deposition testimony:

"Q How many meetings did you have with Mr. Javdanfar before you decided that you would invest in this opportunity?

to his deposition testimony: "Q What agreement had you reached with Morris [Nejathaim] that you thought was breached and you sued him? [¶] . . . [¶] THE DEPONENT [Hassid]: The same agreement that I had, the agreement with them. I had the agreement with them." Hassid testified that the investors "were supposed to invest to receive interest on their money, and the profits, they were supposed to distribute by the agreement we have. And they were not supposed to touch my properties."

2. Ruling

The trial court granted the motions for summary judgment by Nejathaim, Javdanfar, and Yazdanpanah. The court found there was no evidence "that Nejathaim and Javdanfar ever discussed the terms of the purported agreement (i.e., to share profits with Hassid, refrain from [foreclosure], and reduce loan payments) with Hassid, any other plaintiff, or anyone else . . . At most, the evidence shows that Hassid informed defendants of the investment, and that defendants agreed to invest. Hassid admitted at his deposition that he does not know why he sued Nejathaim and Javdanfar."

The court found no serious dispute as to Assil's lack of authority to bind Nejathaim, Javdanfar, and Yazdanpanah. Nor was there evidence of a joint venture agreement between Hassid and Yazdanpanah, either directly or through his father-in-law Hakakian.

The trial court alternatively found the joint venture agreements failed due to lack of consideration. "Without consideration, there could not have been a binding agreement between the parties." Consideration, the court noted, "includes 'any prejudice suffered, or agreed to be suffered . . . other than such as he is at the time of consent lawfully bound

---

"A Several times.

"Q 'Several' meaning three?

"A I'm not sure."

"Q And so your combined investment between the two of you [referring to Nejathaim and Javdanfar] was $3 million, correct?

"MS. CHILDRESS: Objection. Vague and ambiguous. And lacks foundation. And misstates witness' testimony.

"THE WITNESS: Correct."

to suffer, as an inducement to the promisor . . . .' (Civ. Code, § 1605.)" Borrowing funds to pay the initial deposit could qualify as consideration, but not without evidence that the debt was incurred as an inducement to Nejathaim, Javdanfar, or Yazdanpanah. To the contrary, the evidence showed that Hassid would have incurred the indebtedness regardless of whether Nejathaim, Javdanfar, Hakakian, or Yazdanpanah invested in the Loan Pool.

C. Motions by Assil, Olympic CV, and Canico

Assil argued the joint venture agreement with Hassid was terminated by failure of a condition precedent. Assil's agreement to provide the entire purchase price was subject to the allowance of 45 days to gather the funds, and when that period was shortened to 10 days, the agreement ceased to exist due to the failure of an essential condition.

In support, Assil cited Hassid's deposition testimony that upon learning Assil could not fund the entire transaction within the shorter 10-day period, they had no further discussions regarding their agreement. Hassid solicited other investors and offered terms that differed from those offered to Assil.

Olympic CV argued that it had no agreement with Hassid, either directly or through Assil. Assil's membership interest was created *after* the joint venture agreement with Hassid ceased to exist. Assil was not authorized to act on its behalf when the joint venture agreement was created.

Canico argued that because it was created after the joint venture agreements were created, it could not have been a party to any of the agreements. In addition, in light of the rulings in favor of Nejathaim, Javdanfar, Yazdanpanah, Hakakian, and Eshaghian, there are no enforceable contracts with Hassid. Without a contractual relationship, the accounting claim must fail.

Finding no evidence of a binding oral contract or detrimental reliance, the court granted the motions for summary judgment by Assil, Olympic CV, and Canico.

D. This Appeal

Hassid filed a notice of appeal which purported to appeal from nonappealable orders granting motions for summary judgment. We issued an order to show cause re dismissal. On November 3, 2014, Hassid filed a request to construe the orders to incorporate a final judgment, and treat the appeal as taken from that judgment. (Citing *Swain v. California Casualty Ins. Co.* (2002) 99 Cal.App.4th 1, 6; *Avila v. Standard Oil Co.* (1985) 167 Cal.App.3d 441, 445.)

No opposition to Hassid's request has been received. The appeal has been fully briefed, and the claims against respondents have been adjudicated except for entry of a final judgment. Under the circumstances, there is no compelling reason to stay the appeal while Hassid obtains a final judgment. We therefore construe the orders to incorporate a final judgment, and treat the appeal as taken from that judgment.

DISCUSSION

In the trial court, a motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) A moving defendant has met his burden of showing that a cause of action has no merit by establishing that one or more elements of a cause of action cannot be established or that there is a complete defense. (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1196.)

On appeal, we independently review an order granting summary judgment. (*Lackner v. North, supra,* 135 Cal.App.4th at p. 1196.) "[W]e apply the same three-step analysis as the trial court. First, we identify the issues framed by the pleadings. Next, we determine whether the moving party has established facts justifying judgment in its favor. Finally, if the moving party has carried its initial burden, we decide whether the opposing party has demonstrated the existence of a triable, material fact issue. [Citation.]" (*Chavez v. Carpenter* (2001) 91 Cal.App.4th 1433, 1438.)

In determining whether there are triable issues of material fact, we consider all the evidence set forth by the parties, except that to which objections have been made and properly sustained. (Code Civ. Proc., § 437c, subd. (c); *Guz v. Bechtel National, Inc*. (2000) 24 Cal.4th 317, 334 .) We accept as true the facts supported by plaintiff's evidence and the reasonable inferences therefrom (*Sada v. Robert F. Kennedy Medical Center* (1997) 56 Cal.App.4th 138, 148), resolving evidentiary doubts or ambiguities in plaintiff's favor (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768).

I

Hassid challenges the trial court's determinations that the 45-day payment period constituted a condition precedent to the joint venture agreement with Assil, and that their agreement was not supported by consideration. We find no error.

Civil Code section 1436 defines a condition precedent as an act which is to be performed before "some act dependent thereon is performed." That is the situation here. The evidence showed that Assil agreed to fund the entire transaction provided he was allowed 45 days to gather the funds. When the 45-day period was reduced to 10 days, Assil could not provide the entire amount, and the agreement was terminated by the failure of a condition precedent. Hassid's performance was excused, which left him free to seek other investors.

The failure of the contract before the purchase price was due is sufficient by itself to support affirmance of the adjudication. Nonetheless, we briefly discuss the trial court's alternative ruling that the contract also failed due to lack of consideration.

Consideration is defined as a "benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor . . . ." (Civ. Code, § 1605.) The evidence demonstrated that Hassid intended to purchase the Loan Pool with or without Assil. To the extent Hassid suffered a detriment—borrowing money

for the initial deposit—he did not do so as inducement to Assil, but to prevent the loss of his properties by foreclosure.

Without an enforceable contract, the remaining contract claims—breach of covenant of good faith and fair dealing, specific performance, declaratory relief—also fail. (See *Hess v. Transamerica Occidental Life Ins. Co.* (1987) 190 Cal.App.3d 941, 945.)

II

Hassid argues the trial court erred in granting Assil's motion for summary adjudication of the fraud claim. The trial court found the fraud claim against Assil was not enforceable due to lack of damages. (See *Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 173 [plaintiff must show misrepresentation of fact, knowledge of falsity, intent to defraud, justifiable reliance, and damages].) We find no error.

Upon termination of the joint venture with Assil, Hassid was free to seek other investors, which he did without consulting Assil. Assil was not liable for the conduct of the other investors, who challenged his management and control of Olympic CV. As the trial court stated, Hassid "could not have reasonably expected that Assil alone (as a minority investor) could control a drastic reduction in Hassid's payoff of his own loans, in addition to the control over timing for this pay off."

Hassid argues that he relied on Assil's misrepresentations by not attempting to cure the default of his loans and not seeking out other investors who would have refrained from foreclosing. But regardless of any misrepresentation by Assil—which occurred before the auction was held—Hassid knew or should have known his solicitation of other investors would make it difficult for Assil, a minority investor, to prevent other investors from foreclosing against his properties. Hassid's notes had a principal balance of over $5.4 million, and comprised about one-third of the face value of the Loan Pool. It was unreasonable for Hassid to believe the investors who contributed funds *after* the winning bid was announced would forego collecting on his notes simply because he paid the $100,000 initial deposit before the bid was made. It was up to Hassid, not Assil, to cure the defaults on his notes. The foreclosure proceedings were not

caused by Assil's misrepresentations, but Hassid's failure to cure. (See *Building Permit Consultants, Inc. v. Mazur* (2004) 122 Cal.App.4th 1400, 1415 [without damages, fraud is not actionable].)

III

Hassid contends there are triable issues of material fact regarding his contract claims against Nejathaim, Javdanfar, and Yazdanpanah. We disagree. Assuming each investor was aware of Hassid's intent to create a joint venture in which his properties would remain safe from foreclosure, there is no evidence that they agreed to those terms. As the trial court stated, "[a]t most, the evidence shows that Hassid informed defendants of the investment, and that defendants agreed to invest."

There is no evidence that Nejathaim, Javdanfar, or Yazdanpanah agreed to be bound by the agreements between Hassid and Assil or Hakakian. Nor is there any evidence of an agency relationship. An agency is either actual or ostensible. (Civ. Code, § 2298.) An actual agency exists when the agent is employed by the principal (Civ. Code, § 2299). Ostensible agency exists when the principal causes a third person to believe, either intentionally or through lack of ordinary care, that another is the agent of the principal. (Civ. Code, § 2300.)

In determining whether an ostensible agency exists, we look to the conduct of the principals. The issue is whether the principals (Nejathaim, Javdanfar, and Yazdanpanah) caused Hassid to reasonably believe that an agent was authorized to act on their behalf. "It is settled that 'ostensible authority arises as a result of conduct of the principal which causes *the third party* reasonably to believe that the agent possesses the authority to act on the principal's behalf. [Citations.]' [Citations.] Ostensible authority may be established by proof that the principal approved prior similar acts of the agent. [Citations.] [¶] . . . [¶] When the conduct of the principal warrants further inquiry or when the third party is dealing with an assumed agent, the third party is bound at his peril, if he would hold the principal liable, to ascertain not only the fact of the agency but the nature

and extent of the authority. [Citations.]" (*United States Credit Bureau, Inc. v. Cheney* (1965) 235 Cal.App.2d 357, 360–361 (*Cheney*).)

When Assil and Hassid entered into their joint venture agreement, they intended to be the sole participants and divide profits and income equally. Neither had reason to believe there would be other investors. This changed when Assil learned he had only 10 days to fund the transaction. At that point, their agreement ended without further discussion. Hassid accepted a reduced contribution of $5 million from Assil and set out to find other investors.

Even if we were to conclude that Hakakian agreed to the terms proposed by Hassid, there still was no evidence he did so on behalf of his son-in-law Yazdanpanah, or anyone else. In order for ostensible authority to arise, the principal must cause the third party to reasonably believe the agent is authorized to act on his or her behalf. There is no evidence to support a finding of ostensible authority.

Hassid argues that "Hakakian affirmatively represented to Hassid that he and his son-in-law Yazdanpanah were investing as ***partners*** in the Loan Pool when he agreed to Hassid's terms." Hassid has flipped the analysis by focusing on the acts of the agent, not the principal. Focusing on the principal, we find no evidence that Yazdanpanah caused Hassid to reasonably believe Hakakian was authorized to act on his behalf.

Cheney, *supra*, 235 Cal.App.2d 357, which is cited by Hassid, is distinguishable. In *Cheney*, there was a prior instance in which a son (John) had authorized his father (Milford), to sign an application with a utility (Edison) for electrical service at John's ranch (Ranch 1). Milford had signed the application as "'John M. Cheney by Milford Cheney, Partner.'" (*Id.* at p. 359.) Milford testified he was asked to add the designation "Partner" by an Edison employee. (*Ibid.*) There was no evidence that John had knowledge of the use of the word "Partner." (*Ibid.*) Later, Milford signed both of their names on an application with Edison for power as to Milford's ranch (Ranch 2), in which John owned no interest. The appellate court held that notwithstanding the prior instance in which Milford had signed the application for John with the designation "Partner," it

was not reasonable for Edison to conclude, without investigation, that Milford was authorized to bind John to the second application. (*Id.* at p. 361.)

The court in *Cheney* held: "The facts at bench are susceptible to the construction that Edison acted at its peril when it assumed Milford Cheney's authority instead of ascertaining the extent thereof. Assuming, as we must, the veracity of Milford's testimony, Edison was alerted to the fact that he was acting as the special agent of respondent at the time he made the application for Ranch 1 on John's behalf. (Civ. Code, § 2297.) When Milford returned approximately eight months later and sought to obtain electric power for Ranch 2, he signed the application in a manner different from the first application. In these circumstances we cannot conclude as a matter of law that Edison reasonably held, or justifiably held, a belief engendered by respondent's conduct as to the first application in respect of Ranch 1, that Milford had the authority to bind respondent on a second contract, involving a separate piece of property in which John had no interest. The facts, as found by the trial judge, indicate that Edison assumed that Milford was respondent's agent for all purposes without any conduct, which can be gleaned from the record, on respondent's part supporting such assumption, other than the fact that respondent recognized Milford's authority to sign for Ranch 1. The record does not show that any bills for power on Ranch 2 were either sent to or received by respondent, or mailed to an address occupied by respondent. Proof of one prior similar act standing alone may establish ostensible authority. [Citations.] However, it does not conclusively establish ostensible authority as a matter of law. In view of the trial court's findings in the case at bench, we cannot say as a matter of law that there was insufficient evidence to inspire and impel some inquiry on the part of Edison. [Citation.]" (235 Cal.App.2d at p. 361.)

Turning to the facts before us, we conclude that Hassid, like Edison, acted at his own peril by assuming, without investigation, that Hakakian was the authorized representative of Yazdanpanah, Javdanfar, or Nejathaim. The evidence of ostensible authority is much weaker here than in *Cheney.* In *Cheney*, the utility had an earlier dealing in which Milford had signed an application on John's behalf as his authorized

representative. Here, there is no allegation of a prior transaction in which Hassid had dealt with Hakakian as the authorized representative of any other investors.

IV

Finally, we turn to the claims against Olympic CV and Canico. In their joint respondent's brief, these entities correctly point out the failure of the opening brief to raise any substantive arguments concerning the summary judgment ruling in their favor. We agree with their contention that these arguments have been forfeited. (See *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) To the extent their liability is derivative, these entities are entitled to summary judgment for the reasons previously discussed.

DISPOSITION

The judgment is affirmed. Respondents are entitled to their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EPSTEIN, P.J.

We concur:

MANELLA, J.

COLLINS, J.